

### **REMARKS/ARGUMENTS**

The response is provided for amending a previous response mailed on 07 October 2005, against the Final Official Action dated 10 June 2005, to list the omitted claims 2-5.

Claims 1-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodgers in view of Bersonnet.

Applicant respectfully submits that the present invention is significantly different from that of the cited arts as can be seen from their respective structures. Applicant's invention as specified in the amended claim 1 is patentably distinguishable over these references when taken either singularly or in combination for the following reasons:

The Examiner cites Rodgers as an example of an elliptical trainer device having a pair of pivotal bars 48, a wheel 22, means for coupling the bars to the wheel, and a brake mechanism 26, and a switch control means 105 mounted proximal to the bars.

The Examiner further cites Bersonnet as an example of a switch means which is mounted to the handle of an exercise apparatus. Given this teaching, it would have been obvious to one skilled in the art to mount the Rodgers switch to one of the handles of the bars for safety purposes.

Clearly, the Rodgers control console necessitates a driver circuit or control board to actuate the Rodgers brake 26; therefore, although not expressly stated, it would have been obvious to employ the necessary control circuit to utilize the brake means.

However, actually, in Rodgers, the switch control means 105 is mounted proximal to the bars 48, but is not disposed on the handle portion 47, such that one of the hands of the user have to leave the

handle portion 47, in order to operate or to actuate the switch control means 105. In addition, the switch control means 105 is mounted between the bars 48, such that the user's hand may be stricken or hurt by the bars 48 when the bars 48 are moving or swung relative to the top portion 16 of the frame 10, and such that the user have to stop operating the exerciser when it is required to operate or to actuate the switch control means 105.

In Bersonnet, the switch means or body 48 or 74 is mounted to the handle bar 50. However, the handle bar 50 is stationarily disposed on the support structure 64, but may not be moved or swung relative to the support structure 64. In addition, both Rodgers and Bersonnet fail to disclose a driving means to operate a brake device by the switch provided on a handle bar for being operated with the hand that holds the handle bar.

By contrast, in Applicant's invention, as amended in the amended claim 1, the switch (18, 19) is disposed on the upper portion of one of the bars (2, 3) that are pivotally secured to the front portion of the base (1) and that have an upper portion (22, 32) for being grasped by the hands of a user, to actuate the brake device to brake the wheel with the hand of the user that holds the upper portion (22, 32) of the bar (2, 3), and simultaneously, a driving means (85,90) to operate the brake device by the switch (18, 19) provided on the bars (2, 3).

It is to be noted that the bars (2, 3) are pivotally or rotatably secured to the base (1) and will be caused to swing relative to the base (1) while conducting the exercises. The provision of the switch (18, 19) on the upper portion (22, 32) of the bar (2, 3) allows the user to actuate the switch (18, 19) with the hand that holds the upper

portion (22, 32) of the bar (2, 3), without stopping the exerciser, and/or while operating the exerciser.

The cited arts fail to teach an exerciser including a switch (18, 19) disposed on an upper portion (22, 32) of a bar (2, 3) that is pivotal or swingable relative to the base (1), to allow the user to actuate the switch (18, 19) with the hand that holds the upper portion (22, 32) of the bar (2, 3), without stopping the exerciser. The applicant's invention is different from that of the cited arts and has improved over the cited arts.

In view of the foregoing amendments and remarks, applicant respectfully submits that the present invention is patentably distinguishable over the cited arts and that the application is now in condition for allowance, and such action is earnestly solicited.

Courtesy and cooperation of Examiner CROW are appreciated.  
respectfully submitted,

By: Charles E. Baxley

CHARLES E. BAXLEY

Attorney of Record

USPTO Reg. 20,149

90 John Street – 3rd Floor

New York, N.Y. 10038

TEL: (212) 791-7200

FAX: (212) 791-7276

Date: New York, N.Y.